July 2006

Update: Criminal Procedure Monograph 6—Pretrial Motions (Third Edition)

Part 2—Individual Motions

6.21 Motion to Compel Discovery

2. Information or Evidence That Must Be Disclosed by the Prosecuting Attorney

Insert the following text before the last paragraph on page 48:

Even when the evidence was made known only to a law enforcement officer and not to the prosecutor, a *Brady** violation may result from the failure to disclose the exculpatory evidence to the defendant. *Youngblood v West Virginia*, 547 US ___, ___ (2006). In *Youngblood*, the defendant was convicted of sexual assault charges, a weapons charge, and indecent exposure. Months after the defendant was sentenced, a law enforcement officer was shown a potentially exculpatory note written by two victims of the crime. The officer refused to take the note and told the individual in possession of it to destroy it. The note's existence was not disclosed to the defendant, and the United States Supreme Court remanded the case to the West Virginia Supreme Court of Appeals for that court's "view" of the *Brady* issue the defendant raised in his motion to set aside the verdict. The Court did not decide the issue; instead, the Court conditioned its review of the merits on first having the West Virginia court consider the *Brady* issue. *Youngblood*, *supra* at ___.

**Brady v Maryland*, 373 US 83 (1963).

Part 2—Individual Motions

6.24 Motion to Dismiss Because of Double Jeopardy—Multiple Punishments for the Same Offense

Discussion

Insert the following text after the April 2006 update to page 62:

Where a conviction is predicated on conviction of an underlying felony and double jeopardy concerns mandate that the underlying felony conviction be vacated, an appellate court may reinstate the underlying felony conviction if the greater conviction is reversed on grounds affecting only the greater offense. *People v Joezell Williams*, ___ Mich ___, ___ (2006) (if defendant's felony-murder conviction was reversed on grounds affecting only the elements necessary to murder, an appellate court could reinstate the conviction for the underlying offense).

Part 2—Individual Motions

6.28 Motion to Suppress the Fruits of an Illegal Seizure of a Person

Discussion

Insert the following text on page 69 before the paragraph beginning "The Michigan Supreme Court has described . . .":

When law enforcement officers violate the knock-and-announce rule before executing a search warrant, application of the exclusionary rule is not the proper remedy. *Hudson v Michigan*, 547 US ___, ___ (2006).

In *Hudson*, police officers arrived at the defendant's home with a search warrant authorizing them to search for drugs and firearms. Outside the entrance to the defendant's home, the officers announced their presence and waited three to five seconds before entering the house through the unlocked front door. Officers found and seized both drugs and firearms from the home. The Michigan Court of Appeals, relying on Michigan Supreme Court precedent, ruled that application of the exclusionary rule is not the proper remedy when evidence is seized pursuant to a warrant but in violation of the knock-and-announce rule. *Hudson, supra* at ___.

The *Hudson* Court restated the three interests protected by the common-law knock-and-announce rule. First, compliance with the knock-and-announce rule protects the safety of the resident and the law enforcement officer because it minimizes the number of situations when "an unannounced entry may provoke violence in supposed self-defense by the surprised resident." Secondly, when law enforcement officers delay entry by knocking and announcing their presence, a resident is given the opportunity to cooperate with the officers "and to avoid the destruction of property occasioned by a forcible entry." Finally, when officers avoid a sudden entry into a resident's home, it protects a resident's dignity and privacy by affording the resident an opportunity "to collect oneself before answering the door." The Court found none of those interests present in this case:

> "What the knock-and-announce rule has never protected, however, is one's interest in preventing the government from seeing or taking evidence described in a warrant. Since the interests that *were* violated in this case have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable." *Hudson, supra* at ___ (emphasis in original).

The Court further supported its conclusion by referencing three of its own prior opinions. In *Segura v United States*, 468 US 796 (1984), the Court distinguished the effects of "an entry as illegal as can be" from the effects of the subsequent legal search and excluded only the evidence obtained as a

result of the unlawful conduct. In *Segura*, the evidence at issue resulted from a legal search warrant based on information obtained while police officers occupied an apartment they had illegally entered. Because the warrant was not derived from the officers' initial entry, the Court did not exclude the evidence seized under the warrant. As applied to the *Hudson* case, the Court noted that a different outcome in this case could not logically follow the disposition of *Segura.* According to the Court:

> "If the search in *Segura* could be 'wholly unrelated to the prior entry,' when the only entry was warrantless, it would be bizarre to treat more harshly the actions in this case, where the only entry was *with* a warrant. If the probable cause backing a warrant that was issued *later in time* could be an 'independent source' for a search that proceeded after the officers illegally entered and waited, a search warrant obtained *before* going in must have at least this much effect." *Hudson, supra* at ___ (footnote and citations omitted, emphasis in original).

In *New York v Harris*, 495 US 14 (1990), the Court refused to exclude a defendant's incriminating statement when, although the defendant's statement resulted from his warrantless arrest and subsequent custodial interrogation, it "was not the fruit of the fact that the arrest was made in the house rather than someplace else." As for the *Harris* case's import on this case, the *Hudson* Court noted:

> "While acquisition of the gun and drugs [from Hudson's home] was the product of a search pursuant to warrant, it was not the fruit of the fact that the entry was not preceded by knock and announce." *Hudson, supra* at ___ (footnote omitted.)

In *United States v Ramirez*, 523 US 65 (1998), the Court explained that whether the exclusionary rule applied in a specific case turned on whether there was a "sufficient causal relationship" between the Fourth Amendment violation and the evidence discovered during the course of events surrounding the violation. Said the *Hudson* Court with regard to the *Ramirez* case: "What clearer expression could there be of the proposition that an impermissible manner of entry does not necessarily trigger the exclusionary rule?" *Hudson, supra* at ___.

Part 2—Individual Motions

6.37 Motion to Suppress Evidence Seized Without a Search Warrant

Discussion

Insert the following text before the last paragraph on page 100:

A suspicionless search or seizure conducted solely on the basis of an individual's status as a probationer or parolee does not violate the Fourth Amendment's protection against unreasonable searches and seizures. *Samson v California*, 547 US ___, ___ (2006). The *Samson* case involved a California statute* authorizing law enforcement officers to search a parolee—without a warrant and without suspicion of criminal conduct—solely on the basis of the person's status as a parolee.

*Michigan law authorizes a police officer to arrest without a warrant any probationer or parolee if the officer has reasonable cause to believe the person has violated a condition of probation or parole. MCL 764.15(1)(h).

The question to be decided by the *Samson* Court was "[w]hether a condition of [a parolee's] release can so diminish or eliminate a released prisoner's reasonable expectation of privacy that a suspicionless search by a law enforcement officer would not offend the Fourth Amendment." *Samson, supra* at ___ (footnote omitted). The Court concluded that under the totality of the circumstances and in light of the legitimate government interests furthered by monitoring parolee activity, the suspicionless search of a parolee does not impermissibly intrude on the parolee's already diminished expectation of privacy. *Id*. at ___.

Part 2—Individual Motions

6.43 Motion to Dismiss—Violation of 180-Day Rule

Discussion.

Delete the second and third sentences in the paragraph following the block quote of MCR 6.004(D) on page 118, and insert the following text before the partial paragraph at the bottom of that page:

*Overruled to the extent of its inconsistency with MCL 780.131.

In *People v Cleveland Williams*, ___ Mich ___, ___ (2006), the Michigan Supreme Court, contrary to *People v Smith*, 438 Mich 715 (1991),* ruled that MCL 780.131 "contains no exception for charges subject to consecutive sentencing." Consequently, unless specifically excepted under MCL 780.131(2), the 180-day rule applies to *any* untried charge against *any* prisoner, without regard to potential penalty. According to the Court, the plain language of MCL 780.131 permits a prisoner subject to mandatory consecutive sentencing to assert his right to a speedy trial. However, that the defendant in this case was entitled to raise the speedy trial issue did not end the Court's review of this case. After concluding that the defendant raised a valid claim under MCL 780.131, the Court considered the delay in bringing the defendant to trial and determined that the defendant's speedy trial rights had not been violated. *Cleveland Williams, supra* at ___.

**Hill* and *Castelli* were overruled to the extent of their inconsistency with MCL 780.131.

In addition to the defendant's speedy trial claim, the Court addressed specific case law that incorrectly interpreted the statutory language governing the notice required to trigger application of the statute. Contrary to *People v Hill*, 402 Mich 272 (1978), and *People v Castelli*, 370 Mich 147 (1963),* the Court noted that the statutory time period of 180 days begins to run when the prosecution receives notice from the Department of Corrections:

> "The statutory trigger is notice to the prosecutor of the defendant's incarceration and a departmental request for final disposition of the pending charges. The statute does not trigger the running of the 180-day period when the Department of Corrections actually learns, much less should have learned, that criminal charges were pending against an incarcerated defendant." *Cleveland Williams, supra* at ___.